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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SAN JUAN ANA

Sergio Mojarro  
6141 Orange Avenue, Apt. 5  
Cypress, CA 90630  
(949) 662-9600  
Defendant in Pro Per

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

Case No.: 8:18-cv-02196 JLS (ADSx)

NINTENDO OF AMERICA INC., a  
Washington corporation,

Plaintiff,

Vs.

SERGIO MOJARRO MORENO a/k/a/  
SERGIO MOJARRO a/k/a/ MIKEL  
EUSKALDUNAK and DOES 1-10,

Defendants.

**ANSWER TO FIRST AMENDED  
COMPLAINT FOR:**

- (1) DMCA VIOLATION**
- (2) COPYRIGHT INFRINGEMENT  
(NINTENDO GAMES)**
- (3) INDUCEMENT TO INFRINGE  
COPYRIGHT**
- (4) CONTRIBUTORY  
COPYRIGHT INFRINGEMENT**
- (5) TRADEMARK  
COUNTERFEITING &  
INFRINGEMENT**
- (6) FALSE DESIGNATION OF  
ORIGIN, FALSE DESCRIPTIONS**
- (7) FEDERAL TRADEMARK  
DILUTION**
- (8) COMMON LAW  
TRADEMARK INFRINGEMENT**
- (9) STATUTORY TRADEMARK  
INFRINGEMENT**
- (10) CALIFORNIA TRADEMARK  
DILUTION**

**DEMAND FOR JURY TRIAL**

1 Defendant SERGIO MOJARRO hereby answers the complaint of Plaintiff  
2 NINTENDO OF AMERICA INC. as follows:

3 **ANSWER TO COMPLAINT**

- 4 1. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 1, and on this basis,  
6 denies the allegations in paragraph 1.
- 7 2. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 2, and on this basis,  
9 denies the allegations in paragraph 2.
- 10 3. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 3, and on this basis,  
12 denies the allegations in paragraph 3.
- 13 4. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 4, and on this basis,  
15 denies the allegations in paragraph 4.
- 16 5. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 5, and on this basis,  
18 denies the allegations in paragraph 5.
- 19 6. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 6, and on this basis,  
21 denies the allegations in paragraph 6.
- 22 7. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in paragraph 7, and on this basis,  
24 denies the allegations in paragraph 7.
- 25 8. Defendant is without knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in paragraph 8, and on this basis,  
27 denies the allegations in paragraph 8.  
28

1       9. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 9, and on this basis,  
3 denies the allegations in paragraph 9.

4       10. Defendant admits that defendant maintains a profile, using the Mikel  
5 Euskaldunak avatar, on the website OfferUp. Defendant is without  
6 knowledge or information sufficient to form a belief as to the truth of the  
7 remaining allegations in paragraph 10, and on this basis, denies the  
8 remaining allegations in paragraph 10.

9       11. Defendant admits to have offered NES Classic Edition video game  
10 systems for sale via the OfferUp website. Defendant never pre-loaded any  
11 unauthorized copies onto the NES Classic video game console. Defendant is  
12 without knowledge or information sufficient to form a belief as to the truth  
13 of the remaining allegations in paragraph 11, and on this basis, denies the  
14 remaining allegations in paragraph 11.

15       12. Defendant is without knowledge or information sufficient to form a  
16 belief as to the truth of the allegations in paragraph 12, and on this basis,  
17 denies the allegations in paragraph 12.

18       13. Defendant is without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations in paragraph 13, and on this basis,  
20 denies the allegations in paragraph 13.

21       14. Admitted

22       15. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in paragraph 15, and on this basis,  
24 denies the allegations in paragraph 15.

25       16. Defendant is without knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in paragraph 16, and on this basis,  
27 denies the allegations in paragraph 16.  
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1 17. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 17, and on this basis,  
3 denies the allegations in paragraph 17.

4 18. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 18, and on this basis,  
6 denies the allegations in paragraph 18.

7 19. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 19, and on this basis,  
9 denies the allegations in paragraph 19.

10 20. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 20, and on this basis,  
12 denies the allegations in paragraph 20.

13 21. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 21, and on this basis,  
15 denies the allegations in paragraph 21.

16 22. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 22, and on this basis,  
18 denies the allegations in paragraph 22.

19 23. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 23, and on this basis,  
21 denies the allegations in paragraph 23.

22 24. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in paragraph 24, and on this basis,  
24 denies the allegations in paragraph 24.

25 25. Defendant is without knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in paragraph 25, and on this basis,  
27 denies the allegations in paragraph 25.  
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1 26. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 26, and on this basis,  
3 denies the allegations in paragraph 26.

4 27. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 27, and on this basis,  
6 denies the allegations in paragraph 27.

7 28. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 28, and on this basis,  
9 denies the allegations in paragraph 28.

10 29. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 29, and on this basis,  
12 denies the allegations in paragraph 29.

13 30. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 30, and on this basis,  
15 denies the allegations in paragraph 30.

16 31. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 31, and on this basis,  
18 denies the allegations in paragraph 31.

19 32. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 32, and on this basis,  
21 denies the allegations in paragraph 32.

22 33. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in paragraph 33, and on this basis,  
24 denies the allegations in paragraph 33.

25 34. Defendant is without knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in paragraph 34, and on this basis,  
27 denies the allegations in paragraph 34.  
28

1 35. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 35, and on this basis,  
3 denies the allegations in paragraph 35.

4 36. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 36, and on this basis,  
6 denies the allegations in paragraph 36.

7 37. Defendant admits to have offered for sale the installation of a physical  
8 modification chip. Defendant is without knowledge or information sufficient  
9 to form a belief as to the truth of the remaining allegations in paragraph 37,  
10 and on this basis, denies the remaining allegations in paragraph 37.

11 38. Admitted

12 39. Admitted

13 40. Admitted

14 41. Admitted

15 42. Denied

16 43. Admitted

17 44. Defendant is without knowledge or information sufficient to form a  
18 belief as to the truth of the remaining allegations in paragraph 44, and on this  
19 basis, denies the allegations in paragraph 44.  
20

21 45. Defendant is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in paragraph 45, and on this basis,  
23 denies the allegations in paragraph 45.

24 46. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in paragraph 46, and on this basis,  
26 denies the allegations in paragraph 46.  
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1 47. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 47, and on this basis,  
3 denies the allegations in paragraph 47.

4 48. Denied

5 49. Defendant admits to have offered Nintendo's NES Classic for sale via  
6 the OfferUp website.

7 50. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 50, and on this basis,  
9 denies the allegations in paragraph 50.

10 51. Denied

11 52. The responses of paragraphs 1-51 of this answer to complaint are  
12 incorporated by reference as though fully set forth herein.

13 53. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 53, and on this basis,  
15 denies the allegations in paragraph 53.

16 54. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 54, and on this basis,  
18 denies the allegations in paragraph 54.

19 55. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 55, and on this basis,  
21 denies the allegations in paragraph 55.

22 56. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in paragraph 56, and on this basis,  
24 denies the allegations in paragraph 56.

25 57. Defendant is without knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in paragraph 57, and on this basis,  
27 denies the allegations in paragraph 57.  
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1 58. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 58, and on this basis,  
3 denies the allegations in paragraph 58.

4 59. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 59, and on this basis,  
6 denies the allegations in paragraph 59.

7 60. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 60, and on this basis,  
9 denies the allegations in paragraph 60.

10 61. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 61, and on this basis,  
12 denies the allegations in paragraph 61.

13 62. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 62, and on this basis,  
15 denies the allegations in paragraph 62.

16 63. The responses of paragraphs 1-62 of this answer to complaint are  
17 incorporated by reference as though fully set forth herein.

18 64. Defendant is without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations in paragraph 64, and on this basis,  
20 denies the allegations in paragraph 64.

21 65. Defendant is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in paragraph 65, and on this basis,  
23 denies the allegations in paragraph 65.

24 66. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in paragraph 66, and on this basis,  
26 denies the allegations in paragraph 66.  
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1 67. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 67, and on this basis,  
3 denies the allegations in paragraph 67.

4 68. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 68, and on this basis,  
6 denies the allegations in paragraph 68.

7 69. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 69, and on this basis,  
9 denies the allegations in paragraph 69.

10 70. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 70, and on this basis,  
12 denies the allegations in paragraph 70.

13 71. The responses of paragraphs 1-70 of this answer to complaint are  
14 incorporated by reference as though fully set forth herein.

15 72. Defendant is without knowledge or information sufficient to form a  
16 belief as to the truth of the allegations in paragraph 72, and on this basis,  
17 denies the allegations in paragraph 72.

18 73. Defendant is without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations in paragraph 73, and on this basis,  
20 denies the allegations in paragraph 73.

21 74. Defendant is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in paragraph 74, and on this basis,  
23 denies the allegations in paragraph 74.

24 75. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in paragraph 75, and on this basis,  
26 denies the allegations in paragraph 75.  
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1 76. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 76, and on this basis,  
3 denies the allegations in paragraph 76.

4 77. The responses of paragraphs 1-76 of this answer to complaint are  
5 incorporated by reference as though fully set forth herein.

6 78. Defendant is without knowledge or information sufficient to form a  
7 belief as to the truth of the allegations in paragraph 78, and on this basis,  
8 denies the allegations in paragraph 78.

9 79. Denied

10 80. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 80, and on this basis,  
12 denies the allegations in paragraph 80.

13 81. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 81, and on this basis,  
15 denies the allegations in paragraph 81.

16 82. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 82, and on this basis,  
18 denies the allegations in paragraph 82.

19 83. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 83, and on this basis,  
21 denies the allegations in paragraph 83.

22 84. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in paragraph 84, and on this basis,  
24 denies the allegations in paragraph 84.

25 85. Defendant is without knowledge or information sufficient to form a  
26 belief as to the truth of the allegations in paragraph 85, and on this basis,  
27 denies the allegations in paragraph 85.  
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1 86. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 86, and on this basis,  
3 denies the allegations in paragraph 86.

4 87. The responses of paragraphs 1-86 of this answer to complaint are  
5 incorporated by reference as though fully set forth herein.

6 88. Defendant is without knowledge or information sufficient to form a  
7 belief as to the truth of the allegations in paragraph 88, and on this basis,  
8 denies the allegations in paragraph 88.

9 89. Defendant is without knowledge or information sufficient to form a  
10 belief as to the truth of the allegations in paragraph 89, and on this basis,  
11 denies the allegations in paragraph 89.

12 90. Defendant is without knowledge or information sufficient to form a  
13 belief as to the truth of the allegations in paragraph 90, and on this basis,  
14 denies the allegations in paragraph 90.

15 91. Defendant is without knowledge or information sufficient to form a  
16 belief as to the truth of the allegations in paragraph 91, and on this basis,  
17 denies the allegations in paragraph 91.

18 92. Defendant is without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations in paragraph 92, and on this basis,  
20 denies the allegations in paragraph 92.

21 93. Defendant is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in paragraph 93, and on this basis,  
23 denies the allegations in paragraph 93.

24 94. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in paragraph 94, and on this basis,  
26 denies the allegations in paragraph 94.  
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1 95. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 95, and on this basis,  
3 denies the allegations in paragraph 95.

4 96. The responses of paragraphs 1-95 of this answer to complaint are  
5 incorporated by reference as though fully set forth herein.

6 97. Defendant is without knowledge or information sufficient to form a  
7 belief as to the truth of the allegations in paragraph 97, and on this basis,  
8 denies the allegations in paragraph 97.

9 98. Defendant is without knowledge or information sufficient to form a  
10 belief as to the truth of the allegations in paragraph 98, and on this basis,  
11 denies the allegations in paragraph 98.

12 99. Defendant is without knowledge or information sufficient to form a  
13 belief as to the truth of the allegations in paragraph 99, and on this basis,  
14 denies the allegations in paragraph 99.

15 100. Defendant is without knowledge or information sufficient to form a  
16 belief as to the truth of the allegations in paragraph 100, and on this basis,  
17 denies the allegations in paragraph 100.

18 101. Defendant is without knowledge or information sufficient to form a  
19 belief as to the truth of the allegations in paragraph 101, and on this basis,  
20 denies the allegations in paragraph 101.

21 102. Defendant is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations in paragraph 102, and on this basis,  
23 denies the allegations in paragraph 102.

24 103. The responses of paragraphs 1-102 of this answer to complaint are  
25 incorporated by reference as though fully set forth herein.  
26  
27  
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1 104. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 104, and on this basis,  
3 denies the allegations in paragraph 104.

4 105. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 105, and on this basis,  
6 denies the allegations in paragraph 105.

7 106. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 106, and on this basis,  
9 denies the allegations in paragraph 106.

10 107. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 107, and on this basis,  
12 denies the allegations in paragraph 107.

13 108. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 108, and on this basis,  
15 denies the allegations in paragraph 108.

16 109. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 109, and on this basis,  
18 denies the allegations in paragraph 109.

19 110. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 110, and on this basis,  
21 denies the allegations in paragraph 110.

22 111. The responses of paragraphs 1-110 of this answer to complaint are  
23 incorporated by reference as though fully set forth herein.

24 112. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in paragraph 112, and on this basis,  
26 denies the allegations in paragraph 112.  
27  
28

1 113. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 113, and on this basis,  
3 denies the allegations in paragraph 113.

4 114. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 114, and on this basis,  
6 denies the allegations in paragraph 114.

7 115. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 115, and on this basis,  
9 denies the allegations in paragraph 115.

10 116. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 116, and on this basis,  
12 denies the allegations in paragraph 116.

13 117. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 117, and on this basis,  
15 denies the allegations in paragraph 117.

16 118. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 118, and on this basis,  
18 denies the allegations in paragraph 118.

19 119. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 119, and on this basis,  
21 denies the allegations in paragraph 119.

22 120. Defendant is without knowledge or information sufficient to form a  
23 belief as to the truth of the allegations in paragraph 120, and on this basis,  
24 denies the allegations in paragraph 120.

25 121. The responses of paragraphs 1-120 of this answer to complaint are  
26 incorporated by reference as though fully set forth herein.  
27  
28

1 122. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 122, and on this basis,  
3 denies the allegations in paragraph 122.

4 123. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 123, and on this basis,  
6 denies the allegations in paragraph 123.

7 124. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 124, and on this basis,  
9 denies the allegations in paragraph 124.

10 125. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 125, and on this basis,  
12 denies the allegations in paragraph 125.

13 126. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 126, and on this basis,  
15 denies the allegations in paragraph 126.

16 127. Defendant is without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations in paragraph 127, and on this basis,  
18 denies the allegations in paragraph 127.

19 128. Defendant is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations in paragraph 128, and on this basis,  
21 denies the allegations in paragraph 128.

22 129. The responses of paragraphs 1-128 of this answer to complaint are  
23 incorporated by reference as though fully set forth herein.

24 130. Defendant is without knowledge or information sufficient to form a  
25 belief as to the truth of the allegations in paragraph 130, and on this basis,  
26 denies the allegations in paragraph 130.  
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1 131. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations in paragraph 131, and on this basis,  
3 denies the allegations in paragraph 131.

4 132. Defendant is without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations in paragraph 132, and on this basis,  
6 denies the allegations in paragraph 132.

7 133. Defendant is without knowledge or information sufficient to form a  
8 belief as to the truth of the allegations in paragraph 133, and on this basis,  
9 denies the allegations in paragraph 133.

10 134. Defendant is without knowledge or information sufficient to form a  
11 belief as to the truth of the allegations in paragraph 134, and on this basis,  
12 denies the allegations in paragraph 134.

13 135. Defendant is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in paragraph 135, and on this basis,  
15 denies the allegations in paragraph 135.  
16

17  
18 **AFFIRMATIVE DEFENSES**

19 136. As to their affirmative defenses to the Complaint, and each purported  
20 claim for relief stated therein, Defendants allege as follows:  
21

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Failure to State a Claim)**

24 137. The Complaint fails to state facts sufficient to constitute a claim  
25 against Defendants.

26 **SECOND AFFIRMATIVE DEFENSE**

27 **(Notice of intent to add further affirmative defenses)**  
28



138. This case has only recently commenced and defendant has not yet retained counsel. Further, discovery has not yet commenced in connection with this action. Defendant may add further or additional affirmative defenses at such time that he learns such defenses are available to him.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Public Domain)**

139. On information and belief, the works that Plaintiff claims have been infringed are not entitled to copyright protection because they are within the public domain and/or do not constitute copyrightable subject matter.

### **FOURTH AFFIRMATIVE DEFENSE**

#### **(Copyright Misuse)**

140. On information and belief, Plaintiff's claim is barred under the doctrine of copyright misuse.

### **FIFTH AFFIRMATIVE DEFENSE**

#### **(Copyright Ownership)**

141. On information and belief, Plaintiff does not own the copyrights in the works referred to in the Complaint.

### **SIXTH AFFIRMATIVE DEFENSE**

#### **(Originality)**

142. On information and belief, Plaintiff's alleged works consist of non-original features, and thus are not protectable or valid copyrights under 17 U.S.C. §§ 101, 102.

### **SEVENTH AFFIRMATIVE DEFENSE**

#### **(Unclean Hands)**

143. On information and belief, Plaintiff's claims are barred by the doctrine of unclean hands.

### **EIGHTH AFFIRMATIVE DEFENSE**

**(Bad Faith)**

144. On information and belief, the allegations in the Complaint have always been and continue to be frivolous, unreasonable, and groundless.

**NINTH AFFIRMATIVE DEFENSE**

**(Failure to Satisfy Registration Requirements)**

145. On information and belief, the copyright registration referenced in the Complaint is invalid because it fails to satisfy the conditions and requirements specified in Title 17 of the United States Code.

**TENTH AFFIRMATIVE DEFENSE**

**(Scenes A Faire)**

146. Plaintiff's claims are barred by the doctrine of scenes a faire.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Merger)**

147. Plaintiff's claims are barred by the doctrine of merger.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Fair Use)**

148. Plaintiff's claims are barred by the doctrine of fair use in that Defendants' use of Plaintiff's alleged copyrights was transformative and constituted new and unique artistic expression as compared to the underlying alleged copyrighted works.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(De Minimis Infringement)**

149. Plaintiff's claims are barred because any alleged copying or other violations of rights which may have occurred was, at most, *de minimis*, and thus, not actionable under the law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Innocent Intent – 17 U.S.C. § 504(c)(2))**

150. Plaintiff's damages, if any, are limited because Defendants were not aware and had no reason to believe that their acts constituted an infringement of copyright.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

##### **(Estoppel)**

151. Any of Defendants' conduct that is alleged to be unlawful was taken as a result of conduct or lack thereof by Plaintiff, and Plaintiff is thus estopped to assert any claim for relief against Defendants.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

##### **(Waiver)**

152. Plaintiff, by his actions and inactions regarding the subject matter of this lawsuit, waived any and all claims for relief against Defendants.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

##### **(Laches)**

153. Plaintiff's claims are barred by the doctrine of laches.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

##### **(Unjust Enrichment)**

154. Plaintiff is barred from recovery because Plaintiff would be unjustly enriched if permitted to recover under the Complaint.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

##### **(Failure to Mitigate Damages)**


155. Plaintiff's claims are barred, or should be reduced, due to Plaintiff's failure to mitigate its purported damages.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

##### **(DMCA Safe Harbor)**

156. Plaintiff's claims are barred in whole or in part because Defendants are protected by one or more of the DMCA Safe Harbors, 17 U.S.C. § 512.

1  
2 Dated: February 22, 2019

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